



# Storm Water Phase II Proposed Rule

## Construction Site Runoff Control Minimum Control Measure

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*This fact sheet is based on the Storm Water Phase II Proposed Rule. Therefore, the information provided herein is subject to change upon publication of the final Phase II rule in November 1999. A revised series of fact sheets will be provided at that time. A comprehensive list of the current fact sheets is in the text box at left.*

This fact sheet profiles the proposed Construction Site Runoff Control minimum control measure, one of six measures that the owner or operator of a Phase II regulated small municipal separate storm sewer system (MS4) would be required to include in its storm water management program to meet the conditions of its National Pollutant Discharge Elimination System (NPDES) permit. This fact sheet outlines the Phase II Proposed Rule requirements and offers some general guidance on how to satisfy them. It is important to keep in mind that the small MS4 owner or operator would have a great deal of flexibility in choosing exactly how to satisfy the minimum control measure requirements.

### Why Is The Control of Construction Site Runoff Necessary?

Polluted storm water runoff from construction sites often flows to MS4s and ultimately is discharged into local rivers and streams. Of the pollutants listed in Table 1, sediment is usually the main pollutant of concern. Sediment runoff rates from construction sites are typically 10 to 20 times greater than those of agricultural lands, and 1,000 to 2,000 times greater than those of forest lands. During a short period of time, construction sites can contribute more sediment to streams than can be deposited naturally during several decades. The resulting siltation, and the contribution of other pollutants from construction sites, can cause physical, chemical, and biological harm to our nation's waters. For example, excess sediment can quickly fill rivers and lakes, requiring dredging and destroying aquatic habitats.

### What Is EPA Proposing?

The Phase II Proposed Rule would require an owner or operator of a regulated small MS4 to develop, implement, and enforce a program to reduce pollutants in storm water runoff to their MS4 from construction activities that result in a land disturbance of greater than or equal to 1 acre. The small MS4 owner or operator would be required to:

- ☐ Have an ordinance or other regulatory mechanism requiring the implementation of proper erosion and sediment controls, and controls for other wastes, on applicable construction sites;
- ☐ Conduct pre-construction review of construction site plans;
- ☐ Conduct regular inspections during construction;
- ☐ Have penalties for non-compliance (established in the ordinance or other regulatory mechanism);

**Table 1**

#### Pollutants Commonly Discharged From Construction Sites

Sediment  
Solid and sanitary wastes  
Phosphorous (fertilizer)  
Nitrogen (fertilizer)  
Pesticides  
Oil and grease  
Concrete truck washout  
Construction chemicals  
Construction debris

- ❑ Establish procedures for the receipt and consideration of information submitted by the public; and
- ❑ Determine the appropriate best management practices (BMPs) and measurable goals for this minimum control measure. Suggested BMPs (i.e., the program actions/activities) and measurable goals are presented below.

## What Are Some Guidelines for Developing and Implementing This Measure?

Further explanation and guidance for each proposed component of a regulated small MS4's construction program is provided below.

### Regulatory Mechanism

Through the development of an ordinance or other regulatory mechanism, the small MS4 owner/operator would need to establish a construction program that requires controls for polluted runoff from construction sites with a land disturbance of greater than or equal to 1 acre. In recognition of varying limitations on regulatory legal authority, the small MS4 owner/operator would be required to satisfy this minimum control measure only to the maximum extent practicable and allowable under State or Tribal law. If an owner/operator is unable to establish an enforceable construction program due to a lack of legal authority, and is unsuccessful in trying to obtain the necessary authority, the NPDES permitting authority would then assume responsibility.

EPA intends to develop a model ordinance that a small MS4 owner/operator could use as a basis for their construction program. Alternatively, amendments to existing erosion and sediment control programs, or other ordinances, could also provide the basis for the program.

### Site Plan Review

The small MS4 owner/operator would be required to include in their construction program requirements for the implementation of appropriate BMPs on construction sites to control erosion and sediment, as well as various other wastes. To determine if a construction site is in compliance with such provisions, the small MS4 owner/operator would need to review the site plans submitted by the construction site owner/operator before ground is broken.

Site plan review aids in compliance and enforcement efforts since it alerts the small MS4 owner/operator early in the process to the planned use or non-use of proper BMPs and provides a way to track new construction activities. The tracking of sites is useful not only for the small MS4 owner/operator's recordkeeping and reporting purposes, which would be required activities under their NPDES storm water permit (see Fact Sheet 2.9), but also for members of the public interested in ensuring that the sites are in compliance.

### Inspections and Penalties

Once construction commences, the BMPs should be in place and the small MS4 owner/operator's enforcement activities should begin. To ensure that the BMPs are properly installed, the small MS4 owner/operator would be required to perform regular inspections during construction and have penalties in place to deter infractions. Inspections would give the MS4 owner/operator an opportunity to provide additional guidance and education, issue warnings, or assess penalties. To conserve staff resources, one possible option for small MS4 owners/operators could be to have these inspections performed by the same inspector that visits the sites to check compliance with health and safety building codes.

### Information Submitted by the Public

A final requirement of the proposed small MS4 program for construction activity would be the development of procedures for the receipt and consideration of public inquiries, concerns, and information submitted regarding local construction activities. This provision is intended to further reinforce the public participation component of the small MS4 storm water program (see Fact Sheet 2.4) and to recognize the crucial role that the public can play in identifying instances of noncompliance.

The small MS4 owner/operator would be required only to *consider* the information submitted, and may not need to follow-up and respond to every complaint or concern. Although some sort of enforcement action or reply would not be required, the small MS4 owner or operator would need to be able to demonstrate acknowledgment and consideration of the information submitted. A simple tracking process in which submitted public information, both written and verbal, is recorded and then given to the construction site inspector for possible follow-up would suffice.

## What Would Be Appropriate Measurable Goals?

Measurable goals, which would be required for each minimum control measure, are meant to help gauge permit compliance and program effectiveness. The measurable goals, as well as the BMPs, would greatly depend on the needs and characteristics of the owner/operator and the area served by its small MS4. The measurable goals should be chosen using an integrated approach that would fully address the requirements and intent of the minimum control measure. An integrated approach for this minimum measure could include the following measurable goals:

<u>Target Date</u>	<u>Activity</u>
1 year.....	Ordinance or other regulatory mechanism in place; procedures for information submitted by the public in place.
2 years.....	Procedure for regular inspections implemented; a certain percentage rate of compliance achieved.

3 years.....	Maximum compliance with ordinance; improved clarity and reduced sedimentation of local waterbodies.
4 years.....	Increased numbers of sensitive aquatic organisms in local waterbodies.

### Are Construction Sites Already Covered Under the NPDES Storm Water Program?

**Y**es. EPA's existing Phase I NPDES storm water program requires owners or operators of construction activities that disturb 5 or more acres to obtain a NPDES construction storm water general permit. Permit requirements include the submission of a Notice of Intent and the development of a storm water pollution prevention plan (SWPPP). The SWPPP must include a site description and measures and controls to prevent or minimize pollutants in storm water discharges. The proposed Phase II rule similarly would regulate discharges from smaller construction sites disturbing equal to or greater than 1 acre and less than 5 acres (see Fact Sheet 3.0 for information on the proposed Phase II construction program).

Even though, as proposed, all construction sites that disturb more than 1 acre would be covered nationally by an NPDES storm water general permit, the construction site runoff control minimum measure for the small MS4 program was proposed to induce more localized site regulation and enforcement efforts, and to enable owners/operators of regulated small MS4s to more effectively control construction site discharges into their MS4s.

To aid owners or operators of regulated construction sites in their efforts to comply with both local requirements and their NPDES permit, the proposed Phase II rule includes a provision that would allow the NPDES permitting authority to reference a "qualifying State, Tribal or local program" (e.g., a regulated small MS4's storm water program) in the NPDES general permit for construction. This would mean that if a construction site is located in an area covered by a qualifying local program, then the construction site operator's compliance with the local program could constitute compliance with their NPDES permit.

The ability to reference other programs in the NPDES permit is intended to reduce confusion between overlapping and similar requirements, while still providing for both local and national regulatory coverage of the construction site. It is important to note that the provision allowing NPDES permitting authorities to reference other programs would have no impact on, or direct relation to, the small MS4 owner/operator's responsibilities under the construction site runoff control minimum measure profiled in this fact sheet.

### For Additional Information

#### Contact

- ☞ U.S. EPA Office of Wastewater Management
  - Phone : 202 260-5816
  - E-mail: SW2@epa.gov
  - Internet: [www.epa.gov/owm/sw2.htm](http://www.epa.gov/owm/sw2.htm)

#### Reference Documents

- ☞ Storm Water Phase II Proposed Rule Fact Sheet Series.
  - Contact the U.S. EPA Water Resource Center at 202 260-7786 or at [waterpubs@epa.gov](mailto:waterpubs@epa.gov)
  - Internet: [www.epa.gov/owm/sw2.htm](http://www.epa.gov/owm/sw2.htm)
- ☞ Storm Water Phase II Proposed Rule, published on Jan. 9, 1998 in the *Federal Register* (63 FR 1536).
  - Internet: [www.epa.gov/owm/sw2.htm](http://www.epa.gov/owm/sw2.htm)